



May 7, 2001

Mr. W. Thomas Godard  
Assistant General Counsel  
Texas Department of Health  
1100 West 49<sup>th</sup> Street  
Austin, Texas 78756-3199

OR2001-1843

Dear Mr. Godard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146850.

The Texas Department of Health (the "TDH") received a request for information related to a specified meeting that was held on February 19, 2001. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. To secure the protection of section 552.103(a), a governmental body has the burden of providing relevant facts and documents to show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Further, to be excepted under section 552.103, the information must relate to litigation that is pending or reasonably anticipated on the date that the information was requested. Gov't Code § 552.103(c). To determine that the information relates to the anticipated or pending litigation, we follow the rule that "ordinarily, the words 'related to' mean 'pertaining to,' 'associated with' or 'connected with.'" *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.). You indicated that the subject meeting was held to discuss matters that are currently being litigated. You provide a citation and original petition in a lawsuit in which TDH is a named defendant. Based on your comments and our review of the submitted materials we conclude that you have demonstrated that this information is excepted from public disclosure by section 552.103 of the Government Code.

However, absent special circumstances, where all opposing parties to the litigation have had access to the records at issue, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Since the discussion under section 552.103 resolves this request, your argument under section 552.107 will not be addressed.

In conclusion, you may withhold all of the responsive information that all opposing parties in the pending litigation have not had access to.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

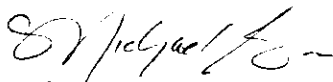
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael Jay Burns".

Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/sdk

Ref: ID# 146850

Encl: Submitted documents

cc: Mr. Jep Hill  
Attorney at Law  
P.O. Box 30254  
Austin, Texas 78701-2443  
(w/o enclosures)